Remarks Section

With regard to the examiner's rejection of claims 1-16 under 35 U.S.C. 103(a) over the combination of the cited prior art references, i.e. U.S. Patent 5, 939,395 issued to Yu et al., U.S. Patent 4,573,761 issued to McLachlan, and U.S. Patent 6,051,571 issued toKelleher, newly presented claims 21-29 are presented to clearly define the essence of the invention and to place the claims in condition for allowance or in better condition for appeal.

It is the applicant's position that there is no motivation or suggestion to modify or combine the stated references that would teach the method of the invention, i.e. **to identify the effectiveness of a nutritional formulation by measuring the free radical scavenging efficiency of specific antioxidants present in the formulation.**

As stated in the specification, antioxidant activity in a test sample can be assayed by a variety of known methods including the ORAC assay, used to measure total serum antioxidant activity. The specification further recites the Optical Antioxidant Sensing Process (OASP) as a method to assay antioxidant activity in a nutritional formulation by measuring the free radical scavenging capability of specific antioxidant fortified cells. There is no suggestion or motivation in any of the references or combinations thereof to provide teaching of the method of the invention to identify the effectiveness of a nutritional formulation in terms of antioxidant scavenging capability.

Further, the subject matter of the invention would not have been obvious to a person having ordinary skill in the art at the time the invention was made in view of a secondary consideration that no identification of nutritional food supplement effectiveness in terms of antioxidant capability can be found in commercially available literature.

In response to the examiner's comments regarding the function of the invention and the intracellular antioxidant activity of specific antioxidant fortified cells, the function of the invention is to determine the effectiveness of a nutritional food

supplement by measuring it's antioxidant capability; the intracellular antioxidant activity of specific antioxidant fortified cells is determined by measuring the scavenging efficiency of specific antioxidants, as stated in claims 21-29.

With regard to the examiner's rejection of claims 1-16 under 35 U.S.C. 112, second paragraph, new claims 21-29 are presented to distinctly claim the subject matter of the invention with appropriate antecedent basis. The terms "said oxygen radical population measurements" and "Trolox" have been deleted.

With regard to the examiner's rejection of claims 17-20, that the specification does not teach one of skill in this art how to make and use the invention, claims 30-36 are directed to the process of the invention for determining the effectiveness of a nutritional food supplement in a biological digestive system by measuring the free radical scavenging capability of antioxidants in an in-vitro model of a biological digestive system.

As stated in the specification, an in-vitro model of a biological digestive system gastro-intestinal (GI) tract can be made by defining a gastrointestinal tract in terms of five vessels representing five segments of the gastrointestinal tract comprising a stomach, small intestine, ascending colon, transverse colon and descending colon. Further, the characteristics of solutions in the vessels are defined in terms of the pH factor and temperature considered normal for the respective portion of a GI tract. Accordingly, one skilled in the art would be able to construct an in-vitro model representing a GI tract as defined in the specification. The process of determining the effectiveness of a nutritional food supplement by measuring antioxidant scavenging efficiency has been previously described at length in the specification.